MONTANA LEGISLATIVE HISTORY

Chapter 571 1997

Bill H 738 S _____ Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 17	✓ C	Hearing Date(s)	Mar 23	✓ C
	Feb 19	✓ C		Apr 06	✓ C
		C			C
		C			C
Date Out	Feb 19	✓ C		Apr 06	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

House BILL NO. 738

INTRODUCED BY [signature]

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE DETENTION AND SHELTER CARE OF YOUTH; AMENDING SECTIONS 10-1203, 10-1209, 10-1210, 10-1212, 10-1213, 10-1214, 10-1215, 10-1216, 10-1218, 10-1222, 10-1235, 10-1236, 10-1237, 10-1242, AND 10-1243, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 10-1203, R.C.M. 1947, is amended to read as follows:

"10-1203. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated:

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court," when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties and responsibilities.

(7) "Judge," when used without further qualification, means the judge of the youth court.

(8) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to: have physical custody of the youth; determine with whom the youth shall live and for what period; protect, train, and discipline the youth; and provide the youth with food, shelter, education, and ordinary medical care. An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than eighteen years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this act to hear all proceedings in which a youth is

alleged to be a delinquent youth, a youth in need of supervision or a youth in need of care, and includes the youth court, the judge and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors; or

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian, or is ungovernable and beyond their control; or

(c) being subject to compulsory school attendance is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in section 10-1301.

(15) "Custodian" means a person other than a parent or guardian, to whom legal custody of the youth has been given, but does not include a person who has only physical custody~~;~~.

(16) "Necessary parties" include the youth, his parents, guardian, custodian or spouse~~;~~.

(17) ~~"Detention facility"~~ "State youth correctional facility" means a residential facility for the ~~detention and~~ rehabilitation of delinquent youth such as Pine Hills School in Miles City, ~~and~~ Mountain View School in Helena, and Swan River youth forest camp.

(18) "Shelter care" means the temporary care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary care of youth in physically restricting facilities."

Section 2. Section 10-1209, R.C.M. 1947, is amended to read as follows:

"10-1209. Intake procedure. (1) Whenever the court receives information from any agency or person based upon reasonable grounds that a youth is, or appears to be a delinquent youth or a youth in need of supervision; or being subject to a court order or consent order, has violated the terms thereof; the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may require the presence of

any person relevant to the inquiry, and may request subpoenas from the judge to accomplish this purpose. The probation officer may require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the state department of social and rehabilitation services.

(4) The probation officer in the conduct of the preliminary inquiry shall:

(a) advise the youth of the youth's rights under this act and the Constitutions of the State of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention or ~~custody~~ shelter care, whether such detention or ~~custody~~ shelter care should be continued based upon criteria set forth in 10-1212.

Once relevant information is secured, the probation officer shall:

(d) determine whether the interest of the public or the youth requires that further action be taken;

(e) terminate the inquiry upon the determination that

no further action be taken;

(f) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling; refer the youth and his parents to another agency providing appropriate services; or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under section 10-1210; provided, however, that such treatment or adjustment is voluntarily accepted by the youth's parents, or guardian, and the youth; and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in ~~custody or~~ detention must be filed within ~~five (5)~~ working days from the date the youth was first ~~confined~~ detained or the petition shall be dismissed and the youth released unless

good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed."

Section 3. Section 10-1210, R.C.M. 1947, is amended to read as follows:

"10-1210. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment, give counsel and advice to the youth and other interested parties, if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person

having legal custody of the youth.

(b) Approval by the youth court judge shall be required where the complaint alleges commission of a felony or where the youth has been or will be in any way detained.

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto shall not be used against the declarant in any proceeding under this act, nor shall the incriminating statement be admissible in any criminal proceeding against the declarant.

(4) The following dispositions may be imposed by informal adjustment:

(a) Probation;

(b) Placement of the youth in a licensed foster home or other home approved by the court;

(c) Placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to, a district youth guidance home;

(d) Transfer of legal custody of the youth to the department of institutions, provided, however, that such commitment shall not authorize the department of institutions to place the youth in a ~~detention facility as defined by this act~~ state youth correctional facility and

such commitment shall not exceed a period of ~~six (6)~~ months without a subsequent order of the court, after notice and hearing."

Section 4. Section 10-1212, R.C.M. 1947, is amended to read as follows:

"10-1212. Detention and shelter care of youth. ~~A youth taken into custody shall not be detained prior to the hearing on the petition except when: his detention or care is required to protect the person or property of others or of the youth; he may abscond or be removed from the jurisdiction of the court; he has no parent, guardian, or other person able to provide supervision and care for him and return him to the court when required; or an order for his detention has been made by the court pursuant to this act.~~ (1) A youth taken into custody may not be detained prior to the hearing on the petition except when:

(a) his detention is required to protect the person or the property of others or of the youth;

(b) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(c) there are not adequate assurances that the youth will appear for court when required; or

(d) an order for his detention has been made by the court.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family needs shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

Section 5. Section 10-1213, R.C.M. 1947, is amended to read as follows:

"10-1213. Release or delivery from custody. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise; or a peace

officer may release the youth under any other reasonable circumstances.

~~(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be held in custody, then the peace officer must notify the probation officer without undue delay, and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding that youth in custody. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and completely separated from adult offenders.~~ Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer must notify the probation officer immediately and the probation officer's approval for detention is required prior to detaining the youth. If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be sheltered in a place approved by the youth court."

Section 6. Section 10-1214, R.C.M. 1947, is amended to read as follows:

"10-1214. Place of shelter care or detention. (1) A youth alleged to be a delinquent youth or youth in need of

supervision may be ~~detained~~ sheltered only in:

(a) a licensed foster home or a home approved by the court for the provision of shelter care of youth;

(b) a facility operated by a licensed child welfare agency;

(c) ~~a district youth guidance home or other youth facility or center which is under the direction or supervision of the court, other public authority or of a private agency approved by the court, or~~ a licensed attention home or shelter facility which is operated by a nonprofit corporation or the youth court for the provision of shelter care of youth;

~~(d) a detention facility;~~

~~(e)~~(d) any other suitable place or facility, designated or operated by the court for the supervision of youth in shelter care.

(2) The youth may be detained in a jail or other facility for the detention of adults only if: the facilities in subsection ~~(c) or (d)~~(1) ~~is~~ are not available or do not provide adequate security; the detention is in an area physically and visually separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; ~~the facilities specified in subsection (a) or (b) are not sufficient;~~ and the court so orders.

~~(2)~~(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of eighteen (18) years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

~~(3)~~(4) A youth alleged to be in need of care shall be placed only in the facilities stated in ~~subsections (a) and (b) of~~ subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses ~~or of youths alleged to be delinquents or in need of supervision by virtue of violations of the law.~~"

Section 7. Section 10-1215, R.C.M. 1947, is amended to read as follows:

"10-1215. Petition -- form and content. A petition initiating proceedings under this act shall be signed by the county attorney and shall be entitled, "In the Matter of ....., a youth," and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, regulation or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse, of the youth; and if none of the parents, guardian, or spouse, resides or can be found within the state, or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in ~~custody~~ detention or shelter care, and if so, the place of detention or shelter care and the time he was ~~taken into custody~~ detained or sheltered;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the

petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request."

Section 8. Section 10-1216, R.C.M. 1947, is amended to read as follows:

"10-1216. Summons. (1) After a petition has been filed, summons shall be served directly to the youth; to his parent or parents having actual custody of the youth, or to his guardian or custodian, as the case may be; and to such other persons as the court may direct.

(2) The summons shall require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Montana Youth Court Act and shall have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of

detention or shelter care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and post-detention proceedings.

(5) If any youth is in ~~custody~~ shelter care or detained under any provision of this act pending an adjudication, the court, upon petition of the youth, his parents or guardian or his counsel shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such ~~custody~~ detention or shelter care and the form the ~~custody~~ detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care."

Section 9. Section 10-1218, R.C.M. 1947, is amended to read as follows:

"10-1218. Basic legal rights. (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) the youth shall be immediately and effectively advised of his constitutional rights and his rights under this act;

(b) the youth may waive such rights under the

following situations:

(i) when the youth is under the age of ~~twelve (12)~~ years, the parents of the youth may make an effective waiver;

(ii) when the youth is over the age of ~~twelve (12)~~ years, and the youth and his parent agree, they may make an effective waiver; and

(iii) when the youth is over the age of ~~twelve (12)~~ years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) In a proceeding alleging a youth to be a delinquent youth:

(i) An extra-judicial statement that would be constitutionally inadmissible in a criminal matter shall not be received in evidence;

(ii) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a youth; and

(iii) An extra-judicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

(2) Title 95, R.C.M. 1947, shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except

that:

(a) No youth shall be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge.

(b) No fingerprint records or photographs shall be filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(c) At such time as the proceedings in the matter including appeals, are complete, the fingerprint records and photographs shall be destroyed; except that such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision as set forth in subsection (1) of this section, the youth, parents and guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained, or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed

counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to a ~~detention facility or a youth forest camp~~ state correctional facility or to the department of institutions for a period of more than six (6) months may result from adjudication.

(4) The court, at any stage of a proceeding on a petition under this act, may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf, or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to: the opportunity to introduce evidence and otherwise be heard on the party's own behalf; confront and cross-examine witnesses testifying against the party; and admit or deny the allegations against the party in the petition.

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in the Youth Court Act or other law.

(7) All post trial motions and other remedies available to an adult in a criminal proceeding under the

Montana Code of Criminal Procedure shall be available to a youth proceeded against under this act."

Section 10. Section 10-1222, R.C.M. 1947, is amended to read as follows:

"10-1222. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including, but not limited to, a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a ~~detention facility~~ state youth correctional facility and such custody shall not continue for a period of more than six (6) months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section.

(2) At any time after the youth has been taken into custody the court may, with the consent of the youth in the manner provided in section 10-1218(1), R.C.M. 1947, for consent by a youth to waiver of his constitutional rights, or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated for a period not to exceed forty-five (45) days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth sixteen (16) years or older who the court deems a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the ~~youth detention facility~~ state youth correctional facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed ~~forty-five (45)~~ days for the purpose of evaluation as to the youth's suitability for placement, and order the youth delivered for evaluation to the ~~youth facility~~ state youth correctional facility designated by the director. If after the evaluation, the department of institutions reports to the court that such child is suitable for placement in a youth forest camp, and if there is space available at a

camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this act. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this act. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2) (b) above.

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution or department, it must transmit with the dispositional judgment copies of a medical report, and such other clinical, predisposition or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana, County of ••••••••••••, ss:

In the district court for the ••••• Judicial District.

On the •••• day of ••••••, 19••••, ••••••••••, a minor of this county, •••••• years of age, was brought before me charged with •••••••••••••••• Upon due proof I find that •••• is a suitable person to be committed to the department of institutions.

It is ordered that •••••••••••• be committed to the department of institutions until ••••••••

The names, addresses and occupations of the parents are:

Name	Address	Occupation
••••••••••••••	••••••••••••••••••	••••••••••••••••••
••••••••••••••	••••••••••••••••••	••••••••••••••••••

The names and addresses of their nearest relatives are:

••••••••••••••••

(3) ~~All foster homes licensed by the social and rehabilitation services, established shall be financed by the department of social and rehabilitation services as set forth in section 71-215 (b), R.C.M. 1947.~~ The licensed foster homes established under this section shall be funded at a rate consistent with other foster homes established for other purposes under law."

Section 13. Section 10-1237, R.C.M. 1947, is amended to read as follows:

"10-1237. Shelter care and ~~Youth~~ detention ~~home~~ facilities. (1) In all counties the county commissioners may provide by purchase, lease, or otherwise, a place to be known as the youth detention ~~home~~ facility, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths, and youth in need of supervision may be detained until final disposition, which place shall be maintained by the county as in other like cases. The judge having jurisdiction may appoint such personnel as required, who shall have charge of said ~~home~~ facility and of the youths detained therein.

~~Such home shall be furnished in a comfortable manner as nearly as may be as a family home.~~ The compensation of such personnel shall be fixed by the court, and such compensation and the maintaining of such ~~home~~ facility shall be paid out of the county treasury which may be supplemented

by state appropriation and federal funds.

(2) Youth courts and nonprofit corporations may provide by purchase, lease, or otherwise, a place to be known as a shelter care facility. Such facility shall be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care. Such facility shall be separate and apart from any facility housing adults charged with criminal offenses. State appropriations and federal funds may be received by the youth court or private nonprofit corporations for establishment, maintenance, or operation of such facility. Such facility shall be furnished in a comfortable manner and be as nearly as possible like a family home."

Section 14. Section 10-1242, R.C.M. 1947, is amended to read as follows:

"10-1242. Establishment of district youth guidance home program. The legislative assembly, in recognition of the wide and varied needs of delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing ~~state institutions~~ state youth correctional facilities, establishes by this act a district youth guidance home program to provide facilities and

services for the rehabilitation of delinquent youths and youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions."

Section 15. Section 10-1243, R.C.M. 1947, is amended to read as follows:

"10-1243. Definitions. For purposes of this act:

~~(a)~~(1) Delinquent youth. A youth as defined in section 10-1203(12).

~~(b)~~(2) A youth in need of supervision. A youth as defined in section 10-1203(13).

~~(c)~~(3) District youth guidance home. A district youth guidance home is a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state ~~institutions~~ youth correctional facilities, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision."

-End-

JUDICIARY COMMITTEE
February 17, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana on Thursday. All members were present with the exception of Representatives Colburn, Day, Roth and Eudaily.

Scheduled for hearing were House Joint Resolution 59 and House Bills 738, 739, 742, and 749.

HOUSE BILL #742:

REPRESENTATIVE WILLIAMS, DISTRICT #70:
This bill changes the provisions relating to the filing of articles of incorporation and amendment of bylaws. It provides for reserves and distribution of net earnings and merger of such associations.

HUGH MASSMAN:
This is the marketing cooperative corporation bill and has 5 chapters, as follows: 1. the general cooperative act 2. cooperative agricultural corporations and districts 3. this chapter is the subject of the present legislation 4. rural electric and telephone cooperatives act 5. credit unions. He went on to explain in further detail the various portions of the act. (copy attached).

There was no discussion and the hearing closed on House Bill 742.

THE HEARING OPENED ON HOUSE BILL #738:

REPRESENTATIVE MELOY, DISTRICT #29:
The purpose of this bill is to revise the laws relating to the detention and shelter care of youths. We need to differentiate between shelter care facilities and detention facilities. We need to find a less restrictive facility and only use the jail when we have to. He went on to discuss what a shelter care facility is and what a detention center is and the difference between them.

JOHN WILKINSON, CHILD & YOUTH DEVELOPMENT BUREAU:
This bill was developed in the context of SJR 22 in the last session.

STEVE NELSON, MONTANA BOARD OF CRIME CONTROL:
This was facilitated in the last legislature. He talked about the facilities available. There were some other problems. There was a concern that institutions already established might be used for short-term care. We found we had to take a long hard look at secure detention facilities. Most juvenile offenses include one of the following; burglary, runaway, non-local runaway, drug abuse, or ungovernable.

MR. WILKINSON:
We need to develop more immediate foster care programs, 24 hour intake services. One of the reasons a youth is being taken to a jail is because there is no one to take them in. We need an alternative method. The youth court act dealt too briefly with this problem. We should consider the following provisions;

1. to revise the definition
2. revise the criteria
3. establish definite responsibility
4. establish appropriate places
5. establish authority

JEREMIAH JOHNSON, MONTANA PROBATION OFFICERS ASSOCIATION:
We endorse the bill. On page 25, section 12 (3), I think the wording should be reinserted, it should not be eliminated. I am concerned also about HB 691. I feel it should be killed, about the placing of girls.

DAN RUSSELL, BUREAU OF AFTERCARE:
I am in charge of the shelter care programs. The Montana Corrections Association also endorse this bill. We hope it does pass.

GEOFFREY BIRNHEUM, MISSOULA DISTRICT YOUTH GUIDANCE HOMES:
We hope one of the detention homes will be in Missoula. There are programs like this in Montana that allow for local control.

IRVIN ZEITNER, MONTANA PROBATION OFFICERS ASSOCIATION:
We support the bill.

REPRESENTATIVE MELOY:
I would only say one thing. I have no objection to reinserting that language. (71-210(b)) I might mention also, this does not require a fiscal note, because these are existing programs. We will ask for matching funds in the amount of $600,000. We need an additional $25,000 to free the money.

REPRESENTATIVE CONROY:
What is the state cost over the biennium.

REPRESENTATIVE MELOY:
$600,000, and we figure an on-going cost of $200,000.

REPRESENTATIVE KEYSER:
How many centers?

MR. WILKENSON:
Five intake centers over the biennium, but it is not designated where as yet.

STEVE NELSON, CRIME CONTROL:
A smaller community could get by with a foster care type system.

REPRESENTATIVE KEYSER:
Approximately how many kids?

MR. WILKINSON:
About 1500 youths.

He went on to give a brief description of each of the following:
1. shelter-care
2. foster-homes
3. youth-correction
4. detention facility

A copy of the proposed amendments is attached.
There was no further discussion and the hearing closed on HB 738.

THE HEARING OPENED ON HOUSE BILL #749:

REPRESENTATIVE E. GUNDERSON, DISTRICT #8:
This would be a companion bill to 316. It would start using some of the earmarked revenue fund to compensate the victims of motor vehicle accidents caused by ininsured motorists who cannot pay judgments against them. At the time of registering a motor vehicle there would be an additional fee of $2 for each car registered. She went on to more fully explain the bill and how it would work.

JAMES HARRISON, MONTANA AUTOMOBILE ASSOCIATION:
I am not really an opponent or a proponent. First of all, if the bill is to be passed we would like to see a limit that would establish an amount level so that we do not have expanding amounts. This bill does require a suit. This bill will foster increased litigation. We would like to have the appearance of the attorney general stronger than it is.

BOYCE CLARK, INDEPENDENT INSURANCE AGENCIES:
He explained to the committee about insurance against the uninsured motorist, how it worked and discussed the cost, the rates, how it is figured, etc.

OPPONENT, GLEN DRAKE:
With this bill you are going to cause a dual cost for the person who insures himself. You will end up with a higher cost than the $2.00 in the bill. It will become very quickly inadequate.

OPPONENT, CHAD SMITH, AMERICAN MUTUAL INSURANCE ALLIANCE:
The position of the Alliance on this bill is that it is not necessa
It contains provisions that are already in the uninsured policies

HB 738
OUTLINE OF PROPOSED REVISIONS
IN
THE MONTANA YOUTH COURT ACT
IN RELATION TO
DETENTION & SHELTER CARE

10-1203 Definitions

Page 4
Lines 7-15

Provides definitions for:
(17) youth correctional facility
(18) shelter care
(19) detention

10-1209 Intake Procedure

Page 5
Lines 17-20

(4) (c) Clarification of intake procedure in relation to detention & shelter care

Page 6
Lines 22-24

(6) Clarification of petition filing procedure for youth held in detention.

10-1210 Consent adjustment without petition

Page 8
Lines 24-25

(4) (d) substitutes state youth correctional for detention facility in conformance with proposed changes in 10-1203 - Definition

10-1212 Detention and shelter care of youth

Page 9
Lines 6-25

(1) Outlines and clarifies criteria under which a youth may be detained

Page 10
Lines 1-16

(2) Outlines criteria under which a youth may be sheltered

10-1213 Release or delivery from custody

Page 11
Lines 3-21

(2) Clarifies and strengthens peace officer notification procedures to probation and the youth court when a youth is to be detained or sheltered

10-1214 Place of shelter care or detention

Page 11
Lines 24-25 &
Page 12
Lines 1-16

(1) Outlines and clarifies place of shelter care. Strikes out District Youth Guidance Homes as a place of Shelter Care.

Page 12
Lines 17-25

(2) Clarifies standards for jails and procedures under which a youth may be detained in jails.

Page 13
Lines 8-14

(4) Clarifies prohibitions for youth in need of care being placed in jail.

10-1215 Petition -- Form and Content

Page 14
Lines 17-20

(5) outlines information to be included in petition in conformance with definitions of detention and shelter care.

10-1216 Summons

Page 15 Line 23 & Page 16 Line 1 & Lines 405

(4) Adds term shelter care to conform with proposed changes in 10-1214 - Place of shelter care or detention

Page 16 Lines 6-15

(5) Clarifies & provides a notification procedure for hearings for youth held in detention or shelter care in order to determine if such detention or shelter care should be continued.

10-1218 Basic Legal Rights

Page 19 Lines 3-4

(3) Substitutes youth correctional facility for detention facility and youth forest camp in conformance with proposed changes in 10-1203 - Definitions

10-1222 Disposition of delinquent youth & youth in need of supervision

Page 20 Line 19 Page 21 Lines 15-16, 19 & 21-22

(1) (d) & (2) (b) substitutes youth correctional facility for detention facility in conformance with proposed changes in 10-1203 - Definitions

10-1236 ~~Foster~~ Shelter Care and Foster Homes

Page 24 Lines 13-16

(1) adds term shelter care in conformance with proposed changes in 10-1203 - Definitions

(2) adds term shelter care and allows state fund appropriations for support of shelter care and foster homes

Page 25 Lines 1-7

(3) strikes exclusive reference to SRS funded & licensed Foster Homes & allows for foster homes to be funded at a rate consistent with other foster homes.

10-1237 Shelter Care and ~~Youth~~ Detention ~~home~~ facilities

Page 25 Lines 10-25 & Lines 26 Line 1

(1) changes term "youth detention home" to "youth detention facility" to reflect a non-jail, secure facility for juveniles. Allows use of state and federal appropriations to supplement county funds for this purpose

Page 26 Lines 2-14

(2) establishes authority for development of shelter care facilities. Allows shelter care facilities to be provided by the youth court, or a non-profit corporation. The intent under non-profit organizations is that these facilities be operated by community boards & responsive to youth referred by the youth court, department of institutions, & SRS. Allows use of state and federal funds to support these facilities.

10-1242 Establishment of District Youth Guidance Home Program

ge 26
ines 23-24

Substitutes youth correctional facility for state institution in conformance with proposed changes in 10-1203 Definitions

10-1243 Definitions

(3) Substitutes youth correction facility for institution, in conformance with proposed changes in 10-1203 - Definitions

JUDICIARY COMMITTEE

EXECUTIVE SESSION
February 19, 1977

The House Judiciary Committee went into executive session at 8:30 a.m. in room 436 of the Capitol Building, Helena, Montana, on Saturday, February 19, 1977. Chairman Scully presided. All members were present.

HOUSE BILL #92:
REPRESENTATIVE DUSSAULT moved to take it off the table. The motion carried with the vote unanimous.
REPRESENTATIVE HOLMES moved "do not pass".
The motion carried with Representative Teague voting "no".

HOUSE BILL #343:
REPRESENTATIVE CONROY moved the adoption of the proposed amendments. The motion carried with the vote unanimous.
REPRESENTATIVE CONROY moved "do pass as amended".
The motion carried with Representative Dussault and Courtney voting "no". A copy of amendments is attached.

HOUSE BILL #363:
REPRESENTATIVE CONROY moved the adoption of the proposed amendments. The motion carried with the vote unanimous.
REPRESENTATIVE ROTH moved "do pass as amended".
The motion carried with the vote unanimous. (copy attached)

HOUSE BILL #455:
REPRESENTATIVE KEYSER moved the adoption of the proposed amendments. The motion carried with the vote unanimous.
REPRESENTATIVE KEYSER moved "do pass as amended".
The motion carried with the vote unanimous. (copy attached)

HOUSE BILL #411:
REPRESENTATIVE CONROY moved "do pass".
The motion carried with the vote unanimous.

HOUSE BILL #497:
REPRESENTATIVE KEYSER moved "do pass".
The motion carried with the vote unanimous.

HOUSE BILL #749:
REPRESENTATIVE RAMIREZ moved "do not pass".
The motion carried with Representatives Day and Holmes voting "no".

HOUSE BILL #738:
REPRESENTATIVE DUSSAULT moved to amend. The motion carried.
REPRESENTATIVE HOLMES moved "do pass as amended". The motion carried with the following representatives voting "no". Representatives Roth, Seifert, McLane, Ramirez, Teague and Conroy.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 23, 1977

The meeting of this committee was called to order by Senator Towe, Actg. Chairman, at 9:35 a.m. in Room 442 of the State Capitol Building on the above date.

ROLL CALL:

All committee members were present except Senators Turnage, Roberts and Regan who were excused to attend other meetings.

CONSIDERATION OF HOUSE BILL 738:

Rep. Meloy of Helena, sponsor of the bill, told the committee that when the Youth Court Act was passed in 1973 or 1974 it prevented the district court from putting a youth in jail if there was an alternative. Since then, with some help from the Crime Control Commission, we now have 6 or 7 shelter care facilities. The result of that study is in this bill. What it does is to define the difference between detention, jail, youth care, and shelter care facilities It provides criteria for shelter care facilities.

Steve Nelson, Montana Board of Crime Control, proponent, said that in the last year we have had requests for large detention care facilities. Senators Towe and Greeley, the present Attorney General, were contacted and introduced the resolution in the last legislative session. He said the Board of Crime Control staffed the study for about 2 years and it came up with a cost of $15 a day for a youth in custody. This bill deals with the legal changes in the law.

John Wilkinson of the Child Development Bureau went over the legal changes needed. There was some interest in the development centers which are not the same as detention homes. He said that they are talking about a $300,000 to $400,000 facility and $150,000 for its upkeep. It revises the definition of detention in this bill and where a youth may be detained. Also, the bill establishes authority for development of detention and youth care facilities. He gave an outline of the bill to the committee. (See Exhibit 1)

Dan Russell, acting administrator of the Department of Institutions, said that they will be a prime user of this facility and urged support for this bill.

There were no more proponents and no opponents to the bill. After questions by committee members, the hearing of this bill was closed.

CONSIDERATION OF HOUSE BILL 544:

Rep. Fabrega of District 44 in Great Falls, explained the changes that had been made in the bill and then went over the bill for the committee. He drew their attention to line 20 on page 3 as that is particularly interesting. He said this bill attempts to help a minor who has not gotten into trouble to avail themselves

LUCAS, JARDINE & MONAGH

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 3-22-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman			✓
ROBERTS, Joe, Vice-Chairman			✓
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat			✓
TOWE, Tom	✓		
WARDEN, Margaret	✓		

(Ex 1)

HB 733
OUTLINE OF PROPOSED REVISIONS
IN
THE MONTANA YOUTH COURT ACT
IN RELATION TO
DETENTION & SHELTER CARE

10-1203 Definitions

Page 4
Lines 7-15

Provides definitions for:
(17) youth correctional facility
(18) shelter care
(19) detention

10-1209 Intake Procedure

Page 5
Lines 17-20

(4) (c) Clarification of intake procedure in relation to detention & shelter care

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(4) Clarifies prohibitions for youth in need of care being placed in jail.

10-1215 Petition -- Form and Content

Page 14
Lines 17-20

(5) outlines information to be included in petition in conformance with definitions of detention and

LUCAS, JARDINE & MONAGHAN

BARRY STEPHENSON
Government Affairs Representative

NFIB National Federation of Independent Business

10837 Southerland Street
Boise, Idaho 83705
Telephone (208) 376-6898

Judiciary

VISITOR'S REGISTER

	REPRESENTING	Check One: Support	Oppo
	Nat. Federation of Independent Business	✓	
[illegible]	Child & Life Development Bu		
Steve P Nelson	Board of Crime Control	738	
[illegible]	Dept. of Institutions		
[illegible]	Secretary of State		
[illegible]	Dept of Health		
[illegible]	Planned Parenthood of Billings		
Ralph A Johnson	Tri-County Family Planning - Helena		
[illegible]	State Health Dept		
Dave Fratus	Rep Dist 100	688	
Melby	Rep Dist 29	738	
[illegible] (NOT HERE TO TESTIFY)			
Lynn Scott	Montana Women's Political Caucus		
Paul Olson	Billings Chamber of Commerce		

(Please leave prepared statement with Secretary)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
April 6, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 10:10 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All committee members were present except Senators Regan and Roberts who were excused to attend other meetings.

EXECUTIVE SESSION

HB 654 - After discussion by the committee, Sen Towe moved that HB 654 BE CONCURRED IN. The motion carried unanimously. The committee stipulated that Senator Turnage is to request that HB 654 be referred to the Finance & Claims Committee after the Judiciary committee report is read.

HB 738 - Sen. Towe moved the adoption of the attached amendments. (See Attach. #1) The motion carried unanimously. He then moved that HB 738 as amended BE CONCURRED IN. The motion carried unanimously.

Rep. Meloy was present during this action and agreed to the amendments.

There being no further business, the committee adjourned at 10:50 a.m..

SENATOR JEAN A. TURNAGE, Chairman

(Attach #1)

Respectfully report as follows: That HOUSE Bill No. 738, third reading bill, be amended as follows:

1. Amend page 11, section 5, lines 12 through 16.
Following: "offenders"
Strike: "Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer must notify the probation officer immediately and the probation officer's approval for detention is required prior to detaining the youth."
Insert: "Whenever the peace officer believes, on reasonable grounds, that the youth must be held in custody, then the peace officer must notify the probation officer without undue delay, and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding that youth in custody. If it is necessary to hold the youth pending appearance before th youth court, then the youth must be held in some place that has been approved by the youth court and is completely separated from adult offenders."

2. Amend page 21, section 10, line 15.
Following: "facility"
Strike: "state youth correctional"

DG-MASS

3. Amend page 21, section 10, lines 21 and 22.
Following: "facility"
Strike: "state youth correctional"
Insert: "youth"

4. Amend page 25, section 12, line 7.
Following: "IN"
Strike: "SECTION"

5. Amend page 25, section 12, line 8.
Following: "(3)"
Strike: ", R.C.M. 1947"

6. Amend page 25, section 12, lines 8 through 11.
Following: "."
Strike: lines 8 through 11 in their entirety

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 1/6/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman			✓
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat			✓
TOWE, Tom	✓		
WARDEN, Margaret	✓		

HB 0738/04

HOUSE BILL NO. 738

INTRODUCED BY MELOY, DUSSAULT

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE DETENTION AND SHELTER CARE OF YOUTH; AMENDING SECTIONS 10-1203, 10-1209, 10-1210, 10-1212, 10-1213, 10-1214, 10-1215, 10-1216, 10-1218, 10-1222, 10-1235, 10-1236, 10-1237, 10-1242, AND 10-1243, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 10-1203, R.C.M. 1947, is amended to read as follows:

"10-1203. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated:

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court," when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties and responsibilities.

(7) "Judge," when used without further qualification, means the judge of the youth court.

(8) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to: have physical custody of the youth; determine with whom the youth shall live and for what period; protect, train, and discipline the youth; and provide the youth with food, shelter, education, and ordinary medical care. An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than eighteen years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this act to hear all proceedings in which a youth is

alleged to be a delinquent youth, a youth in need of supervision or a youth in need of care, and includes the youth court, the judge and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors; or

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian, or is ungovernable and beyond their control; or

(c) being subject to compulsory school attendance is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in section 10-1301.

(15) "Custodian" means a person other than a parent or guardian, to whom legal custody of the youth has been given, but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian or spouse.

(17) ~~"Detention facility"~~ "State youth correctional facility" means a residential facility for the ~~detention and~~ rehabilitation of delinquent youth such as Pine Hills School in Miles City, ~~and~~ Mountain View School in Helena, and Swan River youth forest camp.

(18) "Shelter care" means the temporary care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary care of youth in physically restricting facilities."

Section 2. Section 10-1209, R.C.M. 1947, is amended to read as follows:

"10-1209. Intake procedure. (1) Whenever the court receives information from any agency or person based upon reasonable grounds that a youth is, or appears to be a delinquent youth or a youth in need of supervision; or being subject to a court order or consent order, has violated the terms thereof; the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may require the presence of

any person relevant to the inquiry, and may request subpoenas from the judge to accomplish this purpose. The probation officer may require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the state department of social and rehabilitation services.

(4) The probation officer in the conduct of the preliminary inquiry shall:

(a) advise the youth of the youth's rights under this act and the Constitutions of the State of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention or ~~custody~~ shelter care, whether such detention or ~~custody~~ shelter care should be continued based upon criteria set forth in 10-1212.

Once relevant information is secured, the probation officer shall:

(d) determine whether the interest of the public or the youth requires that further action be taken;

(e) terminate the inquiry upon the determination that

no further action be taken;

(f) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling; refer the youth and his parents to another agency providing appropriate services; or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under section 10-1210; provided, however, that such treatment or adjustment is voluntarily accepted by the youth's parents, or guardian, and the youth; and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in ~~custody or~~ detention must be filed within ~~five (5)~~ working days from the date the youth was first ~~confined~~ detained or the petition shall be dismissed and the youth released unless

good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed."

Section 3. Section 10-1210, R.C.M. 1947, is amended to read as follows:

"10-1210. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment, give counsel and advice to the youth and other interested parties, if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person

having legal custody of the youth.

(b) Approval by the youth court judge shall be required where the complaint alleges commission of a felony or where the youth has been or will be in any way detained.

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto shall not be used against the declarant in any proceeding under this act, nor shall the incriminating statement be admissible in any criminal proceeding against the declarant.

(4) The following dispositions may be imposed by informal adjustment:

(a) Probation;

(b) Placement of the youth in a licensed foster home or other home approved by the court;

(c) Placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to, a district youth guidance home;

(d) Transfer of legal custody of the youth to the department of institutions, provided, however, that such commitment shall not authorize the department of institutions to place the youth in a ~~detention facility as defined by this act~~ state youth correctional facility and

such commitment shall not exceed a period of ~~six (6)~~ months without a subsequent order of the court, after notice and hearing."

Section 4. Section 10-1212, R.C.M. 1947, is amended to read as follows:

"10-1212. Detention and shelter care of youth. ~~A youth taken into custody shall not be detained prior to the hearing on the petition except when: his detention or care is required to protect the person or property of others or of the youth; he may abscond or be removed from the jurisdiction of the court; he has no parent, guardian, or other person able to provide supervision and care for him and return him to the court when required; or an order for his detention has been made by the court pursuant to this act.~~ (1) A youth taken into custody may not be detained prior to the hearing on the petition except when:

(a) his detention is required to protect the person or the property of others or of the youth;

(b) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(c) there are not adequate assurances that the youth will appear for court when required; or

(d) an order for his detention has been made by the court.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family needs shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

Section 5. Section 10-1213, R.C.M. 1947, is amended to read as follows:

"10-1213. Release or delivery from custody. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise; or a peace

officer may release the youth under any other reasonable circumstances.

~~(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be held in custody, then the peace officer must notify the probation officer without undue delay, and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding that youth in custody. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and completely separated from adult offenders.~~ Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer must notify the probation officer immediately and the probation officer's approval for detention is required prior to detaining the youth. ~~WHENEVER THE PEACE OFFICER BELIEVES, ON REASONABLE GROUNDS, THAT THE YOUTH MUST BE HELD IN CUSTODY, THEN THE PEACE OFFICER MUST NOTIFY THE PROBATION OFFICER WITHOUT UNDUE DELAY, AND SHALL, AS SOON AS PRACTICABLE, PROVIDE THE PROBATION OFFICER WITH A WRITTEN REPORT OF HIS REASONS FOR HOLDING THAT YOUTH IN CUSTODY. IF IT IS NECESSARY TO HOLD THE YOUTH PENDING APPEARANCE BEFORE THE YOUTH COURT, THEN THE YOUTH MUST BE HELD IN SOME PLACE THAT HAS BEEN APPROVED BY THE YOUTH COURT AND IS COMPLETELY SEPARATED FROM ADULT OFFENDERS.~~ WHENEVER THE PEACE OFFICER

BELIEVES, ON REASONABLE GROUNDS, THAT THE YOUTH MUST BE DETAINED, THE PEACE OFFICER MUST NOTIFY THE PROBATION OFFICER IMMEDIATELY ~~AND THE PROBATION OFFICER'S APPROVAL FOR DETENTION IS REQUIRED PRIOR TO DETAINING THE YOUTH~~ AND SHALL, AS SOON AS PRACTICABLE, PROVIDE THE PROBATION OFFICER WITH A WRITTEN REPORT OF HIS REASONS FOR HOLDING THAT YOUTH IN CUSTODY. IF IT IS NECESSARY TO HOLD THE YOUTH PENDING APPEARANCE BEFORE THE YOUTH COURT, THEN THE YOUTH MUST BE HELD IN SOME PLACE THAT HAS BEEN APPROVED BY THE YOUTH COURT AND IS COMPLETELY SEPARATED FROM ADULT OFFENDERS. If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be sheltered in a place approved by the youth court."

Section 6. Section 10-1214, R.C.M. 1947, is amended to read as follows:

"10-1214. Place of shelter care or detention. (1) A youth alleged to be a delinquent youth or youth in need of supervision may be ~~detained~~ sheltered only in:

(a) a licensed foster home or a home approved by the court for the provision of shelter care of youth;

(b) a facility operated by a licensed child welfare agency;

(c) ~~a district youth guidance home or other youth facility or center which is under the direction or supervision of the court, other public authority or of a private agency approved by the court; or~~ a licensed attention home or shelter facility which is operated by a nonprofit corporation or the youth court for the provision of shelter care of youth;

~~(d) a detention facility;~~

~~(e)~~(d) any other suitable place or facility, designated or operated by the court for the supervision of youth in shelter care.

(2) The youth may be detained in a jail or other facility for the detention of adults only if: the facilities in subsection ~~(c) or (d)~~(1) ~~is~~ are not available or do not provide adequate security; the detention is in an area physically and visually separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; ~~the facilities specified in subsection (a) or (b) are not sufficient;~~ and the court so orders.

~~(2)~~(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of eighteen (18) years is received at the facility. Such official shall

bring the person before the court upon request or deliver him to a detention facility designated by the court.

~~(3)~~(4) A youth alleged to be in need of care shall be placed only in the facilities stated in ~~subsections (a) and (b) of~~ subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses ~~or of youths alleged to be delinquents or in need of supervision by virtue of violations of the law.~~"

Section 7. Section 10-1215, R.C.M. 1947, is amended to read as follows:

"10-1215. Petition -- form and content. A petition initiating proceedings under this act shall be signed by the county attorney and shall be entitled, "In the Matter of ....., a youth," and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, regulation or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to

enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse, of the youth; and if none of the parents, guardian, or spouse, resides or can be found within the state, or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in ~~custody~~ detention or shelter care, and if so, the place of detention or shelter care and the time he was ~~taken into custody~~ detained or sheltered;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request."

Section 8. Section 10-1216, R.C.M. 1947, is amended to

read as follows:

"10-1216. Summons. (1) After a petition has been filed, summons shall be served directly to the youth; to his parent or parents having actual custody of the youth, or to his guardian or custodian, as the case may be; and to such other persons as the court may direct.

(2) The summons shall require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Montana Youth Court Act and shall have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and post-detention proceedings.

(5) If any youth is in ~~custody~~ shelter care or detained under any provision of this act pending an adjudication, the court, upon petition of the youth, his parents or guardian or his counsel shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such ~~custody~~ detention or shelter care and the form the ~~custody~~ detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care."

Section 9. Section 10-1218, R.C.M. 1947, is amended to read as follows:

"10-1218. Basic legal rights. (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) the youth shall be immediately and effectively advised of his constitutional rights and his rights under this act;

(b) the youth may waive such rights under the following situations:

(i) when the youth is under the age of ~~twelve (12)~~ years, the parents of the youth may make an effective waiver;

(ii) when the youth is over the age of ~~twelve (12)~~

years, and the youth and his parent agree, they may make an effective waiver; and

(iii) when the youth is over the age of ~~twelve (12)~~ years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) In a proceeding alleging a youth to be a delinquent youth:

(i) An extra-judicial statement that would be constitutionally inadmissible in a criminal matter shall not be received in evidence;

(ii) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a youth; and

(iii) An extra-judicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

(2) Title 95, R.C.M. 1947, shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) No youth shall be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge.

(b) No fingerprint records or photographs shall be

filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(c) At such time as the proceedings in the matter including appeals, are complete, the fingerprint records and photographs shall be destroyed; except that such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision as set forth in subsection (1) of this section, the youth, parents and guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained, or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to a ~~detention facility or a youth forest camp~~ state correctional facility or to the department of institutions for a period of more than six (6) months may

result from adjudication.

(4) The court, at any stage of a proceeding on a petition under this act, may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf, or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to: the opportunity to introduce evidence and otherwise be heard on the party's own behalf; confront and cross-examine witnesses testifying against the party; and admit or deny the allegations against the party in the petition.

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in the Youth Court Act or other law.

(7) All post trial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure shall be available to a youth proceeded against under this act."

Section 10. Section 10-1222, R.C.M. 1947, is amended to read as follows:

"10-1222. Disposition of delinquent youth and youth in

need of supervision. (1) If a youth is found to be delinquent or in need of supervision the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including, but not limited to, a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a ~~detention facility~~ state youth correctional facility and such custody shall not continue for a period of more than six (6) months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section.

(2) At any time after the youth has been taken into custody the court may, with the consent of the youth in the manner provided in section 10-1218(1), R.C.M. 1947, for consent by a youth to waiver of his constitutional rights, or after the youth has been adjudicated delinquent or in

need of supervision:

(a) order the youth to be evaluated for a period not to exceed forty-five (45) days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth sixteen (16) years or older who the court deems a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the ~~youth detention facility~~ ~~state youth correctional~~ facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed ~~forty-five (45)~~ days for the purpose of evaluation as to the youth's suitability for placement, and order the youth delivered for evaluation to the ~~youth facility~~ ~~state youth correctional~~ YOUTH facility designated by the director. If after the evaluation, the department of institutions reports to the court that such child is suitable for placement in a youth forest camp, and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this act. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such

further disposition as the court may deem advisable under the provisions of this act. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2) (b) above.

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution or department, it must transmit with the dispositional judgment copies of a medical report, and such other clinical, predisposition or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana, County of ....., ss:

In the district court for the ..... Judicial District.

On the .... day of ....., 19...., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that

.... is a suitable person to be committed to the department of institutions.

It is ordered that ..... be committed to the department of institutions until .....

The names, addresses and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this ..... day of ..... A.D. 19...

.....

Judge"

Section 11. Section 10-1235, R.C.M. 1947, is amended to read as follows:

"10-1235. Order of adjudication -- non-criminal. No commitment of any youth to any ~~institution~~ state youth correctional facility under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor

shall any youth be charged with or convicted of any crime in any court except as provided in this act. Neither the disposition of a youth under this act, nor evidence given in youth court proceedings under this act, shall be admissible in evidence except as otherwise provided in this act."

Section 12. Section 10-1236, R.C.M. 1947, is amended to read as follows:

"10-1236. ~~Foster~~ Shelter care and foster homes. (1) The youth court may establish procedures for finding, maintaining and administering ~~temporary and permanent~~ licensed shelter care and foster homes or other homes approved by the court for youth within the provisions of this act.

(2) The licensed shelter care and foster homes established under this section shall be funded at a rate consistent with other shelter care and foster homes established for other purposes under law. Shelter care as defined by this act may be funded through state appropriation to the youth courts and the departments of institutions and social and rehabilitation services.

(3) ~~All foster homes licensed by the social and rehabilitation services, established shall be financed by the department of social and rehabilitation services as set forth in section 71-210 (b), R.C.M. 1947.~~ ALL FOSTER HOMES LICENSED BY THE SOCIAL AND REHABILITATION SERVICES,

ESTABLISHED SHALL BE FINANCED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AS SET FORTH IN ~~SECTION~~ 71-210 (B), R.C.M. 1947. ~~The licensed foster homes established under this section shall be funded at a rate consistent with other foster homes established for other purposes under law.~~"

Section 13. Section 10-1237, R.C.M. 1947, is amended to read as follows:

"10-1237. Shelter care and ~~Youth~~ detention ~~home~~ facilities. (1) In all counties the county commissioners may provide by purchase, lease, or otherwise, a place to be known as the youth detention ~~home~~ facility, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths, and youth in need of supervision may be detained until final disposition, which place shall be maintained by the county as in other like cases. The judge having jurisdiction may appoint such personnel as required, who shall have charge of said ~~home~~ facility and of the youths detained therein.

~~Such home shall be furnished in a comfortable manner, as nearly as may be as a family home.~~ The compensation of such personnel shall be fixed by the court, and such compensation and the maintaining of such ~~home~~ facility shall be paid out of the county treasury which may be supplemented by state appropriation and federal funds.

(2) Youth courts and nonprofit corporations may provide by purchase, lease, or otherwise, a place to be known as a shelter care facility. Such facility shall be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care. Such facility shall be separate and apart from any facility housing adults charged with criminal offenses. State appropriations and federal funds may be received by the youth court or private nonprofit corporations for establishment, maintenance, or operation of such facility. Such facility shall be furnished in a comfortable manner and be as nearly as possible like a family home."

Section 14. Section 10-1242, R.C.M. 1947, is amended to read as follows:

"10-1242. Establishment of district youth guidance home program. The legislative assembly, in recognition of the wide and varied needs of delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing ~~state institutions~~ state youth correctional facilities, establishes by this act a "district youth guidance home program to provide facilities and services for the rehabilitation of delinquent youths and

youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions."

Section 15. Section 10-1243, R.C.M. 1947, is amended to read as follows:

"10-1243. Definitions. For purposes of this act:

~~(a)~~(1) Delinquent youth. A youth as defined in section 10-1203(12).

~~(b)~~(2) A youth in need of supervision. A youth as defined in section 10-1203(13).

~~(c)~~(3) District youth guidance home. A district youth guidance home is a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state ~~institutions~~ youth correctional facilities, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision."

-End-